

DOCKET NO: 250645US26

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
TETSUJI SATO : EXAMINER: L. ALEJANDRO MULERO
SERIAL NO: 10/802,811 :
FILED: OCTOBER 18, 2004 : GROUP ART UNIT: 1792
FOR: PLASMA PROCESSING :
APPARATUS

REQUEST FOR REFUND

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

Pursuant to 37 C.F.R. § 1.26, Applicants request a refund of the Notice of Appeal fee paid on February 13, 2009, which was in excess of the fee required.

REMARKS

Applicants request a refund of \$540.00 paid on February 13, 2009, for a Notice of Appeal that was not required. As evidenced by the remarks below, this request is believed to be justified.

An Amendment and Request for Continued Examination (RCE) were filed in this case May 30, 2008. In response thereto, Examiner Alejandro Mulero issued an Office Action dated August 13, 2008. Box 2a of the Office Action Summary was not checked indicating that the Office Action was Non-Final. However, the body of the Office Action indicated that the Office Action was Final. Applicants contacted Examiner Alejandro Mulero on September 18, 2008 and February 13, 2009 to resolve the inconsistency within the August 13, 2008 Office Action. In each of these discussions, Examiner Alejandro Mulero indicated that

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Request for Refund

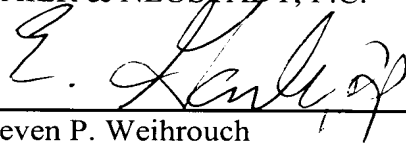
the August 13, 2008 Office Action was Non-Final and should be treated as such. However, the Examiner did not provide a written Interview Summary confirming that the Office Action was Non-Final. Therefore, on February 13, 2009 (the non-extendable due date), Applicants filed a Notice of Appeal as a precaution against abandonment for non-entry of an Amendment after Final. On June 23, 2009, Applicants' representative discussed this case with SPE Hassanzadeh. SPE Hassanzadeh indicated that this application is currently docketed for Appeal, but that he would change the Palm System to indicated that the Office Action was indeed a Non-Final Office Action. Further, Examiner Alejandro Mulero issued an Interview Summary making the September 18th and February 13th interview of record. A copy of the Interview Summary is attached herewith.

Therefore the filing of the Notice of Appeal and the \$540.00 fee associated therewith was not required, and this Request for Refund is believed to be justified.

Please credit the refund to our Deposit Account No. 15-0030.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,811	03/18/2004	Tetsuji Sato	250645US2	5882
22850 7590 06/30/2009 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER ALEJANDRO MULERO, LUZ L	
			ART UNIT 1792	PAPER NUMBER
			NOTIFICATION DATE 06/30/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

Interview Summary	Application No.		Applicant(s)	
	10/802,811		SATO, TETSUJI	
	Examiner		Art Unit	
	Luz L. Alejandro		1792	

All participants (applicant, applicant's representative, PTO personnel):

(1) Luz L. Alejandro (3) _____

(2) Edwin D. Garlepp (4) _____

Date of Interview: 25 June 2009.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.
If Yes, brief description: _____.

Claim(s) discussed: none.

Identification of prior art discussed: none.

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

/Luz L. Alejandro/ Primary Examiner, Art Unit 1792	
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Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: the status of the last office action was discussed. Even though the action is a non-final rejection (as stated in the office action summary) the office action at the conclusion section mistakenly contains the paragraph stating that the action is final. In an interview with Mr. Garlepp it was clarified that the office action is a non-final action and that the inclusion of the finality paragraph was a mistake. The response to the office action, filed on 2/13/09, is going to be entered as a response after a non-final office action.